

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SHAWN KEVIN FROST, SR.,

No. C 13-0739 YGR (PR)

Plaintiff,

ORDER OF DISMISSAL

v.

G. D. LEWIS, et al.,

Defendants.

BACKGROUND

Plaintiff, a prisoner currently incarcerated at Pelican Bay State Prison, has filed a *pro se* civil rights complaint under 42 U.S.C. § 1983. He has also filed a motion for leave to proceed *in forma pauperis* ("IFP"), which will be granted in a separate written Order.

Plaintiff raised the same allegations -- stemming from an incident in 2012 -- in another prior prisoner complaint filed in this Court, which was ordered served and is still pending. *See* Case No. C 12-5226 YGR (PR). Plaintiff alleges that on February 14, 2012, while he was being escorted to his housing unit, he and another inmate "became the victims of a brutal and vicious attack by general population" (Compl. at 2.) Plaintiff claims Defendants were responsible because they "le[ft] a gate that was supposed to be locked, unlocked, and unsupervised." (*Id.*) Plaintiff claims that he and the other inmate suffered injuries from the attack. (*Id.*)

DISCUSSION

A prisoner complaint that merely repeats pending or previously litigated claims may be considered abusive and dismissed under the authority of 28 U.S.C. § 1915A. *Cf. Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (citing *Bailey v. Johnson*, 846 F.2d 1019, 1021 (5th Cir. 1988)) (duplicative *in forma pauperis* complaint may be considered abusive and dismissed under 28 U.S.C. § 1915).

Because Plaintiff raised and is litigating the same allegations and claims raised herein in Case No. C 12-5226 YGR (PR), the instant complaint is deemed duplicative and abusive under §

1 1915A. That Plaintiff adds additional Defendants in this later-filed action does not compel a
2 different result. *See Bailey*, 846 F.2d at 1021 (complaint repeating same allegations asserted in
3 earlier case, even if now filed against new defendants, is subject to dismissal as duplicative).

4 **CONCLUSION**

5 For the foregoing reasons, the complaint is DISMISSED under the authority of 28 U.S.C.
6 § 1915A(b).

7 Further, this Court CERTIFIES that any IFP appeal from this Order would not be taken "in
8 good faith" pursuant to 28 U.S.C. § 1915(a)(3). *See Coppedge v. United States*, 369 U.S. 438, 445
9 (1962); *Gardner v. Pogue*, 558 F.2d 548, 550 (9th Cir. 1977) (indigent appellant is permitted to
10 proceed IFP on appeal only if appeal would not be frivolous).

11 The Clerk of the Court shall enter judgment, terminate all pending motions and close the file.

12 IT IS SO ORDERED.

13 DATED: April 11, 2014


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE